

RESOLUTION NO. 84-009

RESOLUTION APPROVING POWER AGREEMENT BETWEEN GENERAL MILLS, INC.
AND THE CITY OF LODI

RESOLVED that the City Council of the City of Lodi does hereby approve the Power Agreement between General Mills, Inc. and the City of Lodi, a copy of which is marked Exhibit "A", attached hereto and thereby made a part hereof.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Lodi does hereby authorize the City Manager and City Clerk to execute the subject agreement on behalf of the City.

Dated: February 1, 1984

I hereby certify that Resolution No. 84-009 was passed and adopted by the City Council of the City of Lodi in a regular meeting held February 1, 1984 by the following vote:

Ayes: Council Members - Reid, Snider, Murphy,
Pinkerton, and Olson (Mayor)

Noes: Council Members - None

Absent: Council Members - None

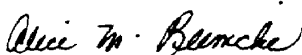

Alice M. Reimche
City Clerk

EXHIBIT "A"

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POWER AGREEMENT
BETWEEN
GENERAL MILLS, INC.,
AND
THE CITY OF LODI

This is an agreement between GENERAL MILLS, INC. (Seller), and the CITY OF LODI, a California Municipal Corporation (City), collectively called "the Parties."

Recitals

Seller is a manufacturer of food products who plans to construct, operate and maintain a qualifying cogeneration facility (Facility) at its Lodi, California, manufacturing plant. Seller's Facility will meet the qualifying facility requirements as established by the Federal Energy Regulatory Commission rules (18 Code of Federal Regulations Sec. 292) implementing the Public Utility Regulatory Policies Act of 1978 (16 U.S.C.A Sec. 796, et seq.).

Seller desires to deliver electric capacity and energy to Pacific Gas and Electric Company (PGandE) via facilities owned by City.

City generates power as a member of the Northern California Power Agency (NCPA), and purchases power from PGandE, (via NCPA), and the Western Area Power Administration (WAPA), all of said power being delivered via PGandE transmission facilities to the point of interconnection

between PGandE and Lodi at the Killelea Substation. City's receipt of power produced by Seller will reduce in like amount the quantity of power delivered to the City from PGandE's transmission system.

City will permit Seller to operate its generating equipment in parallel with City's system, and will transmit for Seller's account capacity and energy to PGandE, as long as such interconnection is provided with a due concern for City's system and its other customers.

Now, therefore, the Parties agree as follows:

ARTICLE I DEFINITIONS

Whenever used in this Agreement, Appendices and attachments hereto, the following terms shall have the following meanings:

"Design Conditions" - Outdoor dry-bulb air temperature conditions at 80°F. Generator capacity increases with lower temperatures and decreases with higher temperatures.

"Interconnection Charge" - The amount charged Seller for all reasonable City costs associated with construction of Interconnection Facilities including, but not limited to connecting the Facility to Seller's existing 12,000 volt substation and establishment of a two-way interconnection at the point where Seller presently takes 12,000 volt service from City. Such costs may include, but are not limited to, direct and overhead costs for equipment and

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installation, modification to existing facilities, engineering, administrative, legal expenses, etc. Said amount will be as set forth in Appendix III attached hereto and incorporated herein by reference.

"Facility" - That electric generating plant described in Appendix I of this Agreement.

"Interconnection Facilities" - All facilities required to interconnect and deliver power from Seller's plant to City's system including but not limited to connection, transformation, relaying, control, switching, metering, safety and related equipment. Interconnection Facilities shall also include any additions and/or reinforcements to City's system made necessary as a direct result of establishment of a two-way interconnection at the point Seller presently takes service from City. (See Appendix II.)

"Point of Facility Connection" - The point at which the Facility connects to Seller's existing 12,000 volt system.

"Point of Interconnection" - The existing point at which Seller's substation is connected to City's system. (See Appendix I.)

"Point of Interconnection With PGandE" - The point at which City's system is deemed to make physical contact with PGandE's system. For purposes of this agreement, and

unless changed by agreement of City and PGandE, said point of interconnection shall be at the KILLELEA SUBSTATION.

"Prudent Electrical Practices" - Those practices, methods and equipment, as changed from time to time, which are commonly used in prudent electrical engineering and operations to operate electric equipment lawfully and with safety, dependability, efficiency and economy.

ARTICLE II DELIVERY

Interconnection Facilities.

A. City agrees to add necessary interconnection facilities, the cost of which will be included in the interconnection charge. Such facilities to include metering, relaying and system protection equipment, etc., for interconnection of City's system and Seller's cogeneration Facility to be constructed on the site of Seller's manufacturing plant located on Mills Avenue in the City of Lodi. Said interconnection facilities will permit receipt into Lodi's system, under Design Conditions, of up to 3,800 KW of power produced by Seller. City shall use its best efforts to complete the Interconnection Facilities in sufficient time to permit full and regular continuous operation of Seller's Facility on schedule (March 1, 1984.) Necessary Interconnection Facilities are set forth in Appendix II.

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B. Delivery to PGandE. City shall deliver Seller's electric capacity and energy to PGandE at City's point of interconnection with PGandE; said delivery of capacity and energy shall be deemed completed when recorded on the generator output meter, installed by WAPA, located on Seller's property, and delivered to the Point of Facility Connection. Such deliveries by City to PGandE may physically originate from Seller's plant or from any other City source or be effectively accomplished by City receiving less power than it might otherwise receive from PGandE's system at City's Point of Interconnection with PGandE.

C. Delivery (Wheeling) Charge. As reimbursement for on-going inspection, maintenance, operation and administrative costs incurred by City in the performance of its responsibilities under this Agreement, City will charge Seller a delivery (Wheeling) charge as set forth in Appendix III, attached hereto and incorporated herein by reference, for all energy delivered under said Agreement. City will account for its costs of on-going inspection, maintenance, operation and administrative responsibilities under this agreement and shall increase or decrease its Wheeling charge to reflect its actual, reasonably incurred costs once each year.

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ARTICLE III
TERM OF AGREEMENT

A. This Agreement shall be binding on execution and shall remain in effect subject to the provisions of Paragraph B below, until December 31, 2004, provided however, that should there cease to be in full force and effect an agreement between Seller and PGandE for the purchase by PGandE of Seller's generated capacity and energy at any time prior to December 31, 2004, this Agreement shall terminate coincident therewith.

B. If either party fails to perform any of the provisions of this Agreement, the other party may, by written notice given within thirty days of said failure to perform, terminate this Agreement if the noticed party does not cure such failure within a period of sixty days (or such longer period as specified in the notice) after receipt of the notice specifying such failure. Seller may appeal such termination by City to the Lodi City Manager and City Council. This is in addition to any other legal recourse Seller may have.

ARTICLE IV
RIGHTS AND OBLIGATIONS

A. City Ownership of Facilities, Right of Access. All interconnection facilities installed on Seller's premises by City shall remain the sole property of City. City will maintain such facilities and shall have the

right of access to Seller's premises without payment of any charge or rent therefor at all reasonable hours for any purpose related to the delivery of electric power. Such purpose shall include but is not limited to meter reading, testing, inspection, construction, maintenance and repair of facilities. Upon termination of this Agreement and for a reasonable period thereafter, City shall have the right of access to the Seller's premises to remove its facilities installed thereon.

B. Ownership, Design, Operation, and Maintenance by Seller. Seller shall own, operate and maintain the Facility and all equipment needed to generate and deliver energy and capacity specified herein, except for City Interconnection Facilities and certain facilities to be installed on the site by WAPA. Seller's Facility and equipment shall continuously meet all requirements of applicable codes and standards of Prudent Electrical Practices, as well as reasonable City requirements.

Seller shall submit all appropriate Facility plans and specifications to City for review. Such review by City shall not be construed as either confirming or endorsing Facility design nor as warranty of the safety, durability or reliability of the Facility or any of the equipment. City shall not, by reason of such review or failure to review, be responsible for strength, details of design, adequacy, or capacity of Seller's Facility or equipment, nor shall City's

acceptance be deemed to be an endorsement of the Facility and/or the equipment.

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C. Interconnection Requirements.

1. The protective equipment such as fuses, relays and circuit breakers required to promptly remove the fault current contributed by Seller's facility shall be owned, operated and maintained by Seller. However, the following requirements shall be followed to insure the continuous proper operation of the protective equipment:

(a) All protective devices installed to protect the City's system under conditions of Seller infeed are subject to City approval.

(b) City reserves the right to observe and approve the checkout and testing of Seller's protective devices.

(c) The relay settings of Seller's protective equipment shall be coordinated with those of City.

(d) City reserves the right to inspect and test all protective equipment associated with the protection of the City system.

(e) Seller shall provide proper routine maintenance of protective equipment, as determined by Prudent Electrical Practices.

2. Seller shall insure that the interconnection of Seller's generating equipment with City's system will not cause any reduction in the quality of service being

provided to City's customers. No abnormal voltages, frequencies, harmonics (voltage and current), radio or TV interference, or interruptions shall result from the interconnection. If such problems do occur, Seller is responsible for their resolution.

3. Seller shall provide synchronizing relays or equipment at the main generator or other breakers as required. Either automatic synchronizing or manual synchronizing supervised by a synchronizing relay shall be provided. Unsupervised manual synchronizing will not be permitted.

4. Seller shall not be permitted to energize a de-energized City circuit.

5. Seller shall maintain its equipment in good operating order. The generator and related electrical facilities are subject to reasonable periodic inspections by City, said inspections not to be more frequent than required by Prudent Electrical Practices.

6. Seller shall maintain a daily log of operations indicating the times of paralleling with and disconnection of the Facility from City's system. The output of the generator on the hour shall also be tabulated. Other pertinent facts about operation shall be tabulated as the parties mutually deem necessary and made available to City upon request.

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7. Interconnection facilities shall meet City needs for load monitoring, as well as other requirements. They shall be accessible at all times to City personnel.

8. Seller shall be responsible for the Interconnection Charge associated with the Agreement, as specified in Appendix III.

D. Delivery Terms and Conditions.

1. Seller's energy and capacity shall be deemed to be delivered at the Point of Facility Connection.

2. City's obligation to deliver power to PGandE under this Agreement is limited to the amount of capacity and energy actually received by City from Seller. However, once such power is actually received by City at the Point of Facility Connection, delivery of equivalent capacity and energy, as recorded at the generator output meter installed by WAPA, to PGandE at the Point of Interconnection with PGandE is deemed to occur by displacement simultaneous therewith.

3. Except for City system emergencies, City agrees to receive Seller's electric power production at all times at which Seller makes such power available to City, provided that Seller will coordinate its generation schedule with City's normally required equipment maintenance schedule. City will make its best efforts to ensure that its facilities are available to receive Seller's full power

production at all times during the year. If City finds it necessary, in order to make repairs or improvements to its system, to temporarily suspend acceptance of capacity and energy from Seller, it shall have the right to do so, provided a) it first pursues all alternative practical means of accepting and transferring Seller's capacity and energy; and b) the City uses all practical means to limit the occurrence of such suspension to the off-peak hours (as defined in Table B of Appendix B of the PGandE/General Mills Power Purchase Agreement) during the months of November through April of each year. In the event of emergency conditions on the City's system which reasonably require the City to suspend acceptance of capacity and energy from Seller, City shall have the right to so suspend acceptance without complying with the conditions of subparts a) and b) of this paragraph. In all cases where City suspends acceptance of capacity and energy from Seller, City shall give as much notice to Seller as circumstances permit, and repairs and improvements will be made and the suspension ended as rapidly as practicable. Seller shall not hold City responsible for any energy and capacity not delivered during outages.

4. Except in case of emergency, in order not to interfere unreasonably with the other party's operation, the curtailing or interrupting or reducing party shall give the other party reasonable prior notice of any curtailment,

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interruption or reduction, the reason for its occurrence and its probable duration. Seller shall notify City promptly of any complete or partial Facility outage.

5. In the event of a scheduled or unscheduled outage of City's facilities, Seller shall be free to serve its own plant load through City's meter.

6. The quantity of energy and capacity delivered by Seller to PGandE shall be based on readings from the meter(s) installed by WAPA on Seller's property pursuant to the Power Purchase Agreement in effect between Seller and PGandE.

7. Seller shall pay to City the delivery (Wheeling) charge associated with this Agreement, as specified in Appendix III.

E. Accounting.

Delivery of Seller's capacity and energy to PGandE shall be accounted for consistent with the two letter agreements dated February 3, 1983 between PGandE and NCPA and between PGandE and WAPA, and with Appendix A Section 3.3(b) of the PGandE/General Mills Power Purchase Agreement dated December 21, 1983.

F. Changes of Equipment.

Before Seller makes any material changes in the equipment associated with parallel generation, Seller shall give City notice of the proposed change in writing.

G. Force Majeure.

The term "Force majeure" as used herein, means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Party claiming force majeure.

If either Party because of force majeure is rendered wholly or partly unable to perform its obligations under this Agreement, that Party shall be excused from whatever performance is affected by the force majeure to the extent so affected, provided that:

1. The non-performing Party, within two weeks after the occurrence of the force majeure, shall give the other party a written report describing the particulars of the occurrence;

2. The suspension of performance is of no greater scope and of no longer duration than is required by the force majeure;

3. No obligations of either Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence; and

4. The non-performing Party uses its best efforts to remedy its inability to perform. This sub-paragraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest. It is understood and

agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having the difficulty.

H. Communications

Seller shall advise City of scheduled shutdowns of facilities. Upon request, City shall advise Seller of the appropriateness of scheduled shutdowns in relation to the City's electric utility operation.

I. Billing

Seller shall pay such charges required by this Agreement within thirty days of billing by the City.

J. Indemnification

1. Seller shall indemnify, hold harmless and defend City, its directors, officers, employees and agents, against all claims, loss, damage and expense resulting from injury to or death of any person (including but not limited to City's employees or Seller's employees) or from injury to property (including but not limited to City's property or Seller's property) arising out of or in any way connected with the performance by Seller of this Agreement and by reason of omission or negligence whether active or passive of Seller, its agents, employees and excepting only such injury or death that may be caused by the predominant negligence of City. Seller shall provide City proper proof of liability insurance for bodily injuries, death and property damage, with insurance certificate indicating City as an

additional insured. Minimum policy amounts to be \$500,000 for one person, \$1,000,000 for one occurrence and \$1,000,000 for property damage.

2. The parties anticipate that City's employees and/or agents will go onto Seller's premises from time to time in connection with the carrying out of City's rights and obligations set forth in Sections II.A. and IV.A. above. Solely with respect to these activities of City's employees and/or agents, City shall indemnify, hold harmless and defend Seller, its directors, officers, employees and agents, against all claims, loss, damage and expense resulting from injury to or death of any person (including but not limited to Seller's employees or City's employees) or from injury to property (including but not limited to Seller's property or City's property) arising out of the omission or negligence whether active or passive of City, its agents and employees, excepting only such injury or death that may be caused by the predominant negligence of Seller.

K. Liability; Dedication

Nothing in this Agreement shall be construed to create any duty to or any standard of care with reference to or any liability to any person not a Party to this Agreement.

No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other

Party or to the public, nor affect the status of City as a municipal electric utility, or Seller as an independent individual or entity.

L. Several Obligations

Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement.

M. Waiver

Any waiver at any time by either Party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter.

N. Assignment

Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party, and any such assignment or delegation made without such written consent shall be null and void. Consent for assignment will not be withheld unreasonably.

ARTICLE V
NOTICES

Any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party to the other may be so given, tendered or delivered, as the case may be, by depositing the same in any United States Post Office with postage prepaid, for transmission by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address designated below. Changes in such designation may be made by notice similarly given.

All written notices or questions shall be directed as follows:

To City: Electric Utility Director
 City of Lodi
 P.O. Box 320
 Lodi, California 95241

To Seller: Engineering Manager
 General Mills, Inc.
 P.O. Box 230
 Lodi, California 95241

ARTICLE VI
CAPTIONS, LAWS, AND GOVERNMENTAL JURISDICTION

A. Captions

All indexes, titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be

inclusive, definitive or to affect the meaning of the contents or scope of this Agreement.

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B. Choice of Laws

This Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

C. Governmental Jurisdiction and Authorization

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. For the purpose of this provision, governmental agency shall not be deemed to include either Party. This Agreement shall not become effective until all required governmental authorizations and permits are first obtained and copies thereof are submitted to City; provided, that this Agreement shall not become effective unless and until all provisions thereof, are authorized and permitted by such governmental agencies without change or condition.

This Agreement shall at all times be subject to such changes by such governmental agencies, and the Parties shall be subject to such conditions and obligations, as such governmental agencies may, from time to time, direct in the exercise of their jurisdiction. Both Parties agree to exert their best efforts to comply with all applicable rules and regulations of all governmental agencies having control over either Party or this Agreement. The Parties shall take all

reasonable action necessary to secure all required governmental approval of this Agreement in its entirety and without change.

If after this Agreement becomes effective, any governmental agency having control over either Party or this Agreement requires any change in this Agreement, or imposes any condition or obligation on either party, which either, in its sole and absolute discretion, deems unreasonably burdensome, such Party may terminate this Agreement.

CITY OF LODI

By _____ (Date) _____
City Manager

Approved as to form Attest: _____
City Clerk

By _____
City Attorney

GENERAL MILLS, INC.

By _____ (Date) _____

APPENDIX I
DESCRIPTION OF FACILITIES

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APPENDIX II
INTERCONNECTION FACILITIES

APPENDIX III
CHARGES

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1. Interconnection Charge: The Interconnection Charge shall be a one-time charge equal to \$11,053.00, payable upon presentation of City invoice.
2. Wheeling Charge: The Wheeling Charge shall be a per kilowatt-hour charge of 0.2 mills.